

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

In the Matter of)	
)	
Revision of Procedures Governing Amendments)	MB Docket No. 05-210
To FM Table of Allotments and Changes)	RM-10960
Of Community of License in the Radio Broadcast)	
Services)	

To: The Commission

COMMENTS OF ENTERCOM COMMUNICATIONS CORP.

Entercom Communications Corp. (“Entercom”) hereby submits these comments in response to the Notice of Proposed Rulemaking (the “NPRM”) in the above-captioned proceeding, issued by the Federal Communications Commission (the “Commission” or the “FCC”) on June 14, 2005. Entercom is the licensee of more than 100 radio stations, serving many of the country’s top markets.

The NPRM seeks comments on various proposed changes to the procedures for making amendments to the FM Table of Allotments and to the FCC’s procedures for making other modifications to broadcast facilities. Several of these changes were suggested by First Broadcasting Investment Partners, LLC (“First Broadcasting”). *Amendment of the Commission’s Rules Governing Modification of FM and AM Authorizations, Petition for Rulemaking* submitted by First Broadcasting Investment Partners, LLC, 14 (Mar. 5, 2004) (“Petition”).

I. INTRODUCTION

A number of the proposed changes set forth in the NPRM have been made in an attempt to reduce the significant burden faced by the Commission’s staff in processing AM and FM allotments. Entercom recognizes that this administrative burden is a serious and legitimate

concern, and supports a number of the proposed changes. But the Commission should not adopt radical changes that may have far-reaching and unintended consequences in the hope that complex decisions affecting broadcast services which are received by large numbers of people can be reached more quickly.

Entercom supports limiting the number of proposed allocations that may be set forth in a petition to amend the FM Table of Allotments and permitting the electronic filing of rulemaking proposals. In addition, Entercom supports the proposal to require that petitions for rulemaking be accompanied by the filing of an application for construction permit as a means to curtail purely speculative filings. However, Entercom is deeply concerned that allowing changes in the designated community of license of an AM or FM station through the filing of a minor modification application would severely reduce the public's input on allocation changes affecting their reception of broadcast stations and significantly inhibit the Commission's ability to fulfill its obligations under the Communications Act. Entercom also believes that the proposal to create a presumption that a station providing a community's sole local transmission service can be relocated to another community without local service – even if subject to specified conditions – raises serious issues, is unwise, and should be rejected.

II. DISCUSSION

A. The Commission Should Limit the Number of Channel Changes that May be Proposed in a Proceeding to Amend the Table of Allotments.

Entercom supports the Commission's proposal to limit the number of FM channel changes that may be proposed in a single proceeding to amend the Table of Allotments. As the Commission noted, proposals to amend the FM Table of Allotments frequently contain a significant number of proposed changes which, in turn, creates a substantial burden on the Commission staff in processing the pleadings due to the resulting complexity of the proposal.

NPRM at para. 35. Moreover, proposals and counterproposals that contain large numbers of channel allotments often necessarily result in an even larger number of entities participating in the relevant proceeding – not just the licensees whose allocations are proposed to be changed, but other competing licensees who either support another proposal or prefer the status quo. This has the effect of further inflating the number of filings that must be evaluated by the Commission’s staff, and creates unwieldy, multifaceted proceedings which must be evaluated step-by-step.

The Commission has proposed that no more than five changes in allotments may be proposed in a single petition unless special factors involving significant public interest benefits can be demonstrated. *Id.* at para. 37. Establishing a limit on the number of proposed allotment changes will significantly reduce the burden associated with analyzing and processing the various proposals, ensuring that a preferential allotment of frequencies can be analyzed correctly and in a timely manner. Entercom encourages the Commission to adopt a more stringent limitation, allowing a petitioner to file a lesser number of changed allotments, and in no event more than four in a single petition.¹

B. The Commission Should Not Permit AM or FM Station Community of License Changes Through the Filing of a Minor Modification Application.

Although Entercom favors reducing the administrative burden faced by the FCC’s staff by limiting the number of FM allotment changes that may be proposed in one proceeding, it cautions against making more radical changes to the Commission’s allocation processes that could well inhibit the FCC’s ability to meet its statutory obligations.

¹ This would parallel the number of contingent applications that may be jointly filed by FM licensees and/or permittees for minor modification of facilities. 47 C.F.R. § 73.3517(e). The Commission’s limit on the number of contingent applications has proven to be a workable compromise which permits improvements in broadcast facilities while restricting the complexity of inter-related modifications to a manageable level for the staff, and a limit of four allotment changes would strike a similar balance.

The FCC has fulfilled its mandate under Section 307(b) of the Communications Act to provide a “fair, efficient and equitable distribution of radio services,” 47 U.S.C. §307(b) (“Section 307(b)”), by following for decades an allocation mechanism that pursues the identification of a preferential arrangement of station allotments through the opportunity for significant public participation. These allotments are anchored in principle to the designated community of license, which establishes a station’s fundamental service obligations to the general locality. 47 C.F.R. §§ 73.24(i), 73.315(a) and 73.1120. The proposal to allow the filing for a change in a station’s designated community of license by the filing of a minor change application, processed on a “first-come/first-served” basis, raises a number of serious concerns with such a procedure. Entercom strongly opposes any abandonment of the established rule making mechanisms in favor of one that rewards mere grantability over the careful consideration of relative public interest factors and minimizes the opportunity for input from the affected community facing the loss of its local transmission service.

The proposal to allow a change in a designated community of license to be made by the filing of a minor modification application under the same procedures as a “one-step” application to modify technical facilities ignores the fundamental distinction in these different proposals: the specification of a community of license has a significant, primary role in the Commission’s furtherance of its Section 307(b) responsibilities, while facility modifications are, by comparison, much more of a rote application of contour overlap and interference considerations. The allocation of a particular community of license establishes an “anchor” point in an area that the Commission has determined best creates a fair, efficient and equitable distribution of broadcast services. Although there are instances when the Commission reviews whether a particular change in technical facilities adheres to Section 307(b) principles, most often the decision to

allow a change in such operating parameters is more ministerial in nature, allowing a broadcast licensee to serve the area surrounding the designated community of license through facilities designed as the licensee best sees fit. This represents a reasonable compromise between allowing licensees flexibility in operation and requiring minimal service standards to a designated locality in fulfillment of the goals of Section 307(b), since the designated community of license will always receive at least principal community signal coverage.

This well-established, considered approach would be dramatically altered by allowing a station's assigned community of license to be removed and relocated through a "one-step" application process. The Commission's judicious allocation of stations to provide service to specific communities in accord with Section 307(b) principles would be replaced with a mechanism that would allow that service "anchor" to be hoisted and dropped anew with no limit on distance or direction – especially if coupled with the presumption in favor of a change in community of license as long as an applicant is the first entity to file an application that meets certain engineering standards.

Moreover, under the existing procedures, a proposal in rule making to change a community of license of an FM station can result in the filing of more than one competing proposal for new service to "anchor" communities, facilitating the Section 307(b) inquiry. But the changes proposed in this proceeding would impede or even preclude that opportunity. The "first-come/first serve" nature of processing minor change applications prevents competing filings unless the applications are filed on the same day. 47 C.F.R. §§ 73.3571(f) [AM] and 73.3573(e) and (f) [FM]. Although the Commission has suggested that it can fulfill its statutory mandate by requiring an applicant to submit an exhibit indicating how the proposed new allotment "comports with the goals underlying Section 307(b)," *NPRM* at para. 24, such a

showing would be incomplete, as it would focus only on a single comparison between the current and the proposed community. By altering the analytical focus from one that evaluates the merit of *competing* proposals to one that seeks only to confirm the *acceptability* of a single proposal, the Commission is deprived of the opportunity to weigh which of a number of proposals and/or counterproposals is to be preferred and best serves the public interest. The perspective offered by a comparison of counterproposals, which can better fulfill the Commission's obligations under Section 307(b), would be sacrificed for purposes of expediency.

By its nature, a minor modification application does not provide the level of public notice that is currently given when an AM station licensee files a major change application or when an FM station licensee files a Petition for Rulemaking to amend the FM Table of Allotments. 47 C.F.R. § 73.3571(a)(1). As a result, any change proposed by a minor modification application would permit a station to more rapidly abandon its assigned community while reducing the notice provided to that community and other local broadcasters of the proposed change. A proposal to make a change in the assigned community of license often presents complex allotment shuffling that affect numerous local communities which merits an opportunity for broadcasters and the public to comment before removing an existing, and in many instances, long-established, local transmission service.

The current procedures afford the public and other radio stations both notice and time to review, consider and comment on any proposed change. AM major change applications may only be tendered during designated windows, and both the filing of the application and the acceptance for filing of an unopposed application are announced by FCC Public Notice. In addition to this Public Notice, the station must provide local notice of the filing of the application through the broadcast of on-air announcements and, under many circumstances, ads published in

a local daily newspaper. Following such public notice, applications are subject to a designated period of time in which petitions to deny or informal objections may be filed. Petitions for Rulemaking to change an FM station's community of licenses are subject to similar comment period requirements.

By contrast, AM and FM minor change applications are subject to only minimal public notice requirements – no local on-air or newspaper announcements are required. The filing of the application represents its acceptance for filing, and establishes processing priority of the proposal; at that point, the application is “cut off” from competing proposals and it can be granted at any time thereafter. 47 C.F.R. §§ 73.3571(f) [AM] and 73.3573(e) and (f) [FM]. The Public Notice issued by the FCC upon the filing of the application does not identify the nature of the application, nor do the processing standards afford any set period for comment on the proposal advanced in the application. As a result, even to the degree a community receives notice of a proposed change in a station's community of license, there is no assurance that interested parties would have sufficient time to participate effectively in the process. To expect a community to organize and respond effectively with no local notice and but a short period of time, at best, is unrealistic; this concern may be even further exacerbated in the case of applications proposing relocation of stations from rural to more urbanized areas, as the Commission has recognized. *NPRM* at para. 28.

Given the serious concerns raised by this NPRM and the views expressed by the Commission in the ongoing broadcast localism proceeding, in which the Commission has observed that one of its overarching goals is that of “establishing and maintaining a system of local broadcasting that is responsive to the unique interests and needs of individual communities,” *Broadcast Localism, Notice of Inquiry*, FCC 04-129 (2004), Entercom believes

that the Commission should reject proposed changes in its procedures which have the effect of eliminating or restricting the opportunity to solicit and consider alternative proposals to requests for a change in the community of license of an AM or FM station.

C. The Commission Should Not Adopt the Presumption that Relocation of a Community's Sole Local Transmission Service to Become Another Community's First Local Transmission Service is in the Public Interest.

Entercom urges the Commission to reject the proposal that in certain instances removal of a community's sole local transmission service to become the first local transmission service for another community is to be presumed to further the public interest. As the Commission notes in the NPRM, "the public has a legitimate expectation that existing service will continue." *NPRM* at para. 40 (*citing Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870) (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990). Creating such a broad presumption as the one suggested by First Broadcasting would dramatically change fundamental precepts of the Commission's allotment priorities.

The creation of this presumption would inevitably encourage the migration of stations from more rural, sparsely populated areas to more densely populated urban areas. As previously noted, the Commission itself recognizes that both its "allotment priorities and numerous policies developed in allocations rulemaking proceedings" have been designed to limit this clustering. *NPRM* at para. 28. Therefore, the Commission should decline to adopt any presumption that would encourage a result that is contrary to the intent of its allotment priorities and policies.

Moreover, as noted by the Commission, while First Broadcasting offered a hypothetical situation to illustrate the alleged merit of its proposal, other scenarios are possible where First Broadcasting's proposal "would only exacerbate an existing imbalance in service between two

communities.” *NPRM* at para. 45. This further calls into question the wisdom of the proposal and emphasizes the skepticism with which the Commission should evaluate it.

In any event, it is unclear that such a presumption is even necessary. As support that the FCC will not allow a station providing a community’s sole FM local service to change its community of license unless another station is simultaneously moved into the previous community, First Broadcasting cites to a 1989 Report and Order concerning certain change-in-community-of-license procedures. *Petition* at 14 (*citing Amendment of the Commission’s Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870, 4847 (1989)). First Broadcasting itself subsequently quotes a more recent Commission Memorandum Opinion and Order which notes that “*except in rare cases*, we prohibit an FM licensee from changing its community of license if to do so would deprive its current community of license of its sole local service.” *Id.* at 15 (*citing Application for Pacific Broadcasting of Missouri, LLC For Special Temporary Authorization to Operate Station KTKY(FM), Refugio, Texas*, FCC 03-18, at para. 7 (rel. Feb. 11, 2003)) (*emphasis added*). There is a well-established body of precedent that has been applied in such situations, and the Commission has been presented no compelling reason to abandon that precedent merely to expedite application processing. Though it may be understandably reluctant to do so, the Commission has already indicated a willingness to permit such changes if appropriate under existing standards. This represents a sensible balance by the Commission between the importance of local transmission service to a community while retaining the discretion to approve such community of license changes where doing so would further Section 307(b) principles.

III. CONCLUSION

For the foregoing reasons, Entercom respectfully requests that the Commission not adopt wholesale the changes to its processing and rule making procedures described in the NPRM. Entercom believes that the number of channel changes that may be proposed in a proceeding to amend the FM Table of Allotments should be limited and that such filings may be made electronically. Entercom also supports the requirement that an application for construction permit be filed when a petition for rulemaking is submitted as a means of curtailing purely speculative filings. Entercom urges that the Commission reject the proposal to permit changes in the community of license for an AM or FM station through the filing of a minor modification application, and that the Commission decline to adopt a presumption that in certain instances the relocation of an FM station that provides a community's sole local transmission service to another community without local transmission service is in the public interest.

Respectfully Submitted,

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